

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

GARRET SITTS, et al., Plaintiffs, v. DAIRY FARMERS OF AMERICA, INC. and DAIRY MARKETING SERVICES, LLC, Defendants.	Civil Action No. 2:16-cv-00287-cr
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**DEFENDANTS DAIRY FARMERS OF AMERICA, INC. AND
DAIRY MARKETING SERVICES, LLC'S MOTION
IN LIMINE NO. 8: TO PRECLUDE CERTAIN ARGUMENT OR EVIDENCE
AND MEMORANDUM OF LAW IN SUPPORT**

EVIDENTIARY HEARING REQUESTED

REDACTED VERSION FILED PUBLICLY PURSUANT TO PROTECTIVE ORDER

By plaintiffs' own account, this case is about whether Dairy Farmers of America, Inc. ("DFA") and Dairy Marketing Services, LLC "engaged in a multi-faceted conspiracy with processors and other cooperatives to reduce competition, acquire monopsony power, and suppress raw milk prices in the market for raw milk sales in Order 1."¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Court, respectfully, should exclude such evidence and argument from trial pursuant to Federal Rules of Evidence 402, 403, and 404.²

DISCUSSION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Expert Report of Einer R. Elhauge ¶ 4 (Oct. 3, 2018), available at ECF No. 147-1.

² Because motions *in limine* are not due until June 17, 2020, DFA reserves the right to file additional motions *in limine* after this date.

³ [REDACTED]

[REDACTED]

4

[REDACTED]

[illegible]

⁶ Of course, the Court’s decision to permit initial discovery into this topic does not support plaintiffs’ attempt to now admit this evidence at trial, as “the scope of relevance for discovery purposes is necessarily broader than trial relevance.” *Durant v. Target Stores, Inc.*, 2017 WL 4163661, at *3 (D. Conn. Sept. 20, 2017) (citation omitted). *See also* Fed. R. Civ. P. 26(b)(1) (“Information within this scope of discovery need not be admissible in evidence to be discoverable.”).

	7	8	9	10
7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

14

18

[REDACTED]

[REDACTED]

[REDACTED] Federal Rule of Evidence 404(b), which forecloses evidence of an act “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character,” prohibits precisely this kind of improper incrimination-by-extrapolation-reasoning at trial.

II. THE IMPROPER CONSEQUENCES OF ADMITTING THIS EVIDENCE FAR OUTWEIGH ANY RELEVANCE

[REDACTED]

¹⁹

²⁰ “Vermont law recognizes a litigation privilege that extends to statements within documents filed in a judicial proceeding, and thus a defamation claim based upon court filings is not actionable in Vermont.” *Von Weingarten v. Chester*, 2019 WL 4059839, at *5 n.1 (D. Vt. Aug. 28, 2019) (Reiss, J.) (quotation omitted), *appeal filed*, No. 19-2932 (2d Cir. Sept. 13, 2019).

[REDACTED]

[REDACTED]

21

22

23

[REDACTED]

[REDACTED]

[REDACTED] Presumably, at trial, both sides would have to question at least as many witnesses on the topic, if not more.

[REDACTED]

24

[REDACTED]

25

[REDACTED]

26

[REDACTED]

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[REDACTED]

CONCLUSION

For the foregoing reasons, DFA respectfully requests that the Court preclude plaintiffs from introducing any evidence, testimony, or argument regarding [REDACTED]

[REDACTED] DFA also respectfully requests that the Court schedule an evidentiary hearing on this Motion.

Dated: June 15, 2020

Respectfully submitted by:

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LOCAL RULE 7(A)(7) CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7(a)(7), the undersigned counsel for DFA certifies that DFA made a good faith attempt to obtain plaintiffs' agreement to the requested relief in this motion, but was not able to do so.

Dated: June 15, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I electronically filed with the Clerk of Court the foregoing document using the CM/ECF system and the below parties via email. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

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